

EMERGENCY

STATE OF CALIFORNIA--OFFICE OF ADMINISTRATIVE

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2010-0720-09	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2010-0723-02E
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For use by Office of Administrative Law (OAL) only

2010 JUL 23 2:12:11

OFFICE OF
ADMINISTRATIVE LAW

NOTICE

REGULATIONS

AGENCY FILE NUMBER (if any)

AGENCY WITH RULEMAKING AUTHORITY
State Board of Education**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE	

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Open Enrollment	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 4700, 4701, 4702, 4703
	AMEND
	REPEAL
TITLE(S) 5	

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §511346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §511349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))			

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective 30th day after filing with Secretary of State	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) July 30, 2010
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify)		

7. CONTACT PERSON Debra Thacker, Regulations Coordinator	TELEPHONE NUMBER (916) 319-0642	FAX NUMBER (Optional) (916) 319-0155	E-MAIL ADDRESS (Optional) dthacker@cde.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

DATE

July 23, 2010

TYPED NAME AND TITLE OF SIGNATORY

Amy Bisson Holloway, Assistant General Counsel

For use by Office of Administrative Law (OAL) only

1 Title 5. EDUCATION

2 Division 1. California Department of Education

3 Chapter 5.2. Improvement of Elementary and Secondary Education

4 Open Enrollment Act

5 Subchapter 1. Open Enrollment Act

6 Article 1. General Provisions

7
8 **§ 4700. Purpose.**

9 These regulations set forth requirements for the administration of the Open
10 Enrollment Act.

11 NOTE: Authority cited: Section 48353, Education Code. Reference: Sections 48350
12 through 48361, inclusive, Education Code.

13
14 **§ 4701. Identification of Open Enrollment Schools.**

15 (a) The State Superintendent of Public Instruction (SSPI) shall annually construct a
16 list of 1,000 schools for the Open Enrollment Act that maintains the same ratio of
17 elementary, middle, and high schools as existed in decile 1 of the 2009 Base Academic
18 Performance Index (API) file and retains only "10 percent" of an LEA's schools pursuant
19 to the following methodology:

20 (1) the list of 1,000 schools shall include 687 elementary schools, 165 middle
21 schools, and 148 high schools;

22 (2) the list of 1,000 schools shall exclude the following:

23 (A) schools that are court, community, or community day schools;

24 (B) schools that are charter schools;

25 (C) schools that are closed; and

26 (D) schools that have fewer than 100 valid test scores.

27 (3) a local educational agency (LEA) shall have on the list no more than 10 percent
28 of its total number of schools that are not closed. However, when that total number of
29 schools is not evenly divisible by 10, the 10 percent number of the LEA's schools shall
30 be rounded up to the next whole number; and

31 (4) to produce the final list of 1,000 schools, the SSPI shall apply the following

process:

(A) create a pool of schools:

1. for the purpose of constructing the Open Enrollment Schools List for transfer during the 2010-2011 school year, this pool shall be created by selecting all schools from the 2009 Base API file.

2. for the purpose of constructing the Open Enrollment Schools List for transfer during the 2011-2012 school year and every year thereafter, this pool shall be created by selecting all schools from the most current year's growth API file;

(B) create an initial pool of eligible schools by excluding from the pool set forth in subdivision (a)(4)(A)(1.) or (2.) as appropriate, all schools identified in subdivision (a)(2);

(C) from the pool of eligible schools set forth in subdivision (a)(4)(B), select the list of 1,000 schools with the lowest API scores while maintaining the number of the elementary schools, middle schools, and high schools respectively, as set forth in subdivision (a)(1);

(D) from the list of 1,000 schools identified in subdivision (a)(4)(C), retain only the schools with the lowest API scores from each LEA irrespective of whether it is an elementary school, middle school, or high school until the LEA reaches the 10 percent cap pursuant to subdivision (a)(3);

(E) from the schools remaining in the eligible pool after the list of 1,000 schools as set forth in subdivision (a)(4)(C) were removed, retain only the schools that are part of LEAs that have not yet reached their 10 percent cap pursuant to subdivision (a)(3);

(F) create the next pool of eligible schools by combining the schools retained in subdivision (a)(4)(D) with the schools retained in subdivision (a)(4)(E); and

(G) repeat the procedures outlined in subdivisions (a)(4)(C) through (a)(4)(F) until such time as the number of schools as set forth in subdivision (a)(4)(D) is 1,000 schools with no LEA exceeding the 10 percent cap.

(5) The final list of 1,000 Open Enrollment schools is achieved when the list contains 1,000 schools that meet the requirements for both the decile 1 ratio and the LEA "10 percent" cap.

NOTE: Authority cited: Section 48353, Education Code. Reference: Sections 48352 and 52052, Education Code.

1 **§ 4702. Application for Transfer Pursuant to the Open Enrollment Act.**

2 (a) The district of residence shall notify the parent(s) or guardian(s) of each pupil
3 enrolled in a school included on the most recent Open Enrollment list of the option to
4 transfer. This notice shall be provided on the first day of instruction; if the district has not
5 been notified of whether its school(s) is on the list, the notification shall be provided no
6 later than September 15.

7 (b) A pupil who transfers to a school pursuant to the Open Enrollment Act and is
8 currently enrolled in that school shall not be required to reapply for enrollment in that
9 school, regardless of whether the pupil's school of residence remains on the list of
10 1,000 Open Enrollment schools.

11 NOTE: Authority cited: Section 48353, Education Code. Reference: Sections 48354 and
12 48355, Education Code.

FINDING OF EMERGENCY

Open Enrollment Act

The State Board of Education (SBE) finds that an emergency exists and that the emergency regulations adopted are necessary to avoid serious harm to the public peace, health, safety, or general welfare, especially for public school pupils attending Open Enrollment schools.

SPECIFIC FACTS DEMONSTRATING THE EXISTENCE OF AN EMERGENCY AND THE NEED FOR IMMEDIATE ACTION

Despite years of the best efforts of California's legislators, education leaders, teachers, and administrators, California's achievement gap has been only marginally reduced. Further, many of the students who are not adequately achieving are concentrated in failing schools. Although academic achievement in these schools is slowly improving, achievement has not improved enough to reduce the achievement gap and provide students with the education and life opportunities necessary to a secure future for them, and for California's society. As a result, in 2010 the California State Legislature decided that the students in these schools can no longer wait for their educational opportunities to catch up.

With the Open Enrollment Act (SBX5 4, Chapter 3, 5th Extraordinary Session, 2010), the California State Legislature has taken the step of giving students from 1,000 low-achieving schools the right to leave the school in which they reside and enroll in higher achieving schools. In order to ensure that the Open Enrollment Act may be implemented immediately by those schools participating in the 2010-2011 school year; section 48353 of the California Education Code requires the SBE to adopt emergency regulations. It is, therefore, necessary that emergency regulations be adopted.

AUTHORITY AND REFERENCE

Authority: Section 48353, Education Code.

Reference: Sections 48350, 48351, 48352, 48353, 48354, 48355, 48356, 48357, 48358, 48359, 48360 and 48361, Education Code.

INFORMATIVE DIGEST

The Open Enrollment Act, SBX5 4 (Romero), was signed into law on January 7, 2010, and became effective on April 14, 2010. The Open Enrollment Act provides students enrolled in one of the 1,000 "low-achieving" schools, hereinafter referred to as "Open Enrollment" schools, the option to enroll in a different school with a higher Academic Performance Index than the pupil's school of residence. The purpose of the regulations is to:

- Identify a methodology for selecting the 1,000 Open Enrollment schools.

- Allow a parent to submit an application to a different school if the school that his or her child will attend in the subsequent school year is on the list of 1,000 Open Enrollment schools.
- Clarify that a student is not required to reapply for enrollment in a school to which the he or she has been admitted under the Open Enrollment Act, regardless of whether the student's prior school of residence remains on the list of 1,000 Open Enrollment schools.
- Miscellaneous provisions regarding the timing of the application process and the notifications to be made during the application process.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The SBE did not consider any technical, theoretical, empirical study, reports, or other documents in the drafting these regulations.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The proposed regulations do not impose a mandate on local agencies or school districts.

COST ESTIMATE

The emergency regulations would not place any additional costs or savings on local agencies or school districts.